

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Daniel Schmidt and Kurt A. Herwald,)	
)	
Plaintiffs,)	C.A. No. 6:05-1536-HMH
)	
vs.)	OPINION & ORDER
)	
John F. McGovern and Steven Reynolds,)	
)	
Defendants.)	

This matter is before the court on the court’s sua sponte review of subject matter jurisdiction over the instant action. Daniel Schmidt and Kurt A. Herwald (collectively “plaintiffs”) filed suit in the Court of Common Pleas, Greenville County, alleging numerous causes of action against John F. McGovern (“McGovern”) and Steven Reynolds (“Reynolds”) (collectively “defendants”). McGovern removed the case to federal court on the basis of diversity and federal question/bankruptcy jurisdiction. See 28 U.S.C. §§ 1331, 1334. The defendants argue that diversity jurisdiction exists despite the fact that Reynolds is a South Carolina citizen because the plaintiffs fraudulently joined Reynolds as a defendant. (Notice of Removal at 7-8.) Further, the defendants allege that this court has jurisdiction under 28 U.S.C. § 1334 as a result of the bankruptcy proceedings involving ChanneLinx, Inc. (Id.) At present, the plaintiffs have not filed a motion to remand.

“Subject-matter jurisdiction cannot be conferred by the parties, nor can a defect in subject-matter jurisdiction be waived by the parties.” Brickwood Contractors Inc. v. Datanet Eng’g, 369 F.3d 385, 390 (4th Cir. 2004) (citing United States v. Cotton, 535 U.S. 625, 630 (2002)). “Accordingly, questions of subject-matter jurisdiction may be raised at any point

during the proceedings and may (or, more precisely, must) be raised *sua sponte* by the court.”

Id. Further, “if at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c).

The parties are ordered to provide the court with supplemental briefing concerning the court’s jurisdiction to hear this case pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1334 within twenty (20) days from the date of this order.

IT IS SO ORDERED.

s/ Henry M. Herlong, Jr.
United States District Judge

Greenville, South Carolina
June 3, 2005